

the full extent of the English law; and, in some instances, apparently in accordance with the previously settled principles in relation to imperfect legal titles and equitable interests, carried farther as to such interests; although nothing more than the legal title or equitable interest of the defendant could, in any case, be sold; as to which the purchaser is considered as standing in the place of the defendant. And therefore, it has been held, that a real estate held intail could not be subjected to the payment of the debts of the tenant intail further than to the extent of his interest; so that, after his death, the heir intail should take the estate, as by the law of England, entirely unincumbered with any such liability. (t)

By this statute of 1732, 'the houses, lands, negroes, and other hereditaments and real estate,' belonging to any person indebted, are made liable for all his just debts. The lien which a creditor obtains by his judgment upon the real estate of his debtor, arises as a necessary consequence from this liability. Therefore, such a lien only fastens upon that which may properly be denominated real estate; because by the statute of frauds it is declared, that no writ of execution shall bind the property of the goods of the party against whom it issued, but from the time of its being delivered to the sheriff. In reference to this distinction, therefore, it may often be necessary to ascertain whether the property of the debtor be, in fact, real estate or not.

It may also frequently become necessary to ascertain whether *the thing* be real or personal estate, not only with a view to the nature and commencement of the lien by which it is proposed to be bound; but also in reference to its ownership, so as to shew whether it can be, in any manner, liable to be taken in execution under the writ by virtue of which it may be attempted to be sold. For, no real estate can be bound by a judicial lien but that which belongs to the defendant; nor can any real or personal estate but his be taken in execution. Hence, in reference to the parties to the judgment, it may be necessary to ascertain whether the thing has been so incorporated with the inheritance as to have vested in the landlord, or to have passed to the heir, or him in reversion or remainder; or whether the thing be one of those kinds of fixtures which a tenant may remove during his term; or which, as personal estate has vested in the particular tenant, or has passed to the executor or administrator of the deceased owner of the land.

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(t) Gilb. Execu. 41, 42; *Ridgely v. McLaughlin*, 3 H. & McH. 220.